January 1903, and 10th January, 1903 and the Deed Poll of 6th January 1903 rescinded and cancelled, the removal of any of the defendants who may be trustees, and the appointment of Cheng Pin (3rd defendant) and themselves as new trustees.

This matter of the appointment of new trustees was postponed by me until I should decide whether or not the conveyance of 28th August, 1879, was wrongful and a breach of trust.

The sole issue now left for my present decision is whether the conveyance of the legal estate in the family burial ground to separate trustees was wrongful and ought to be rectified.

In the course of the argument the ground was cleared considerably. It is not now contended that the reservation or allocation of the 1 acre 3 roods 02 poles for graves for the family of the first trustees was wrongful or improper or a breach of trust. It is only the creation of a separate trust and a separate legal estate that is attacked. It was proper enough and in accordance with good Chinese ideas that the heads of the clan (for the purposes of the burial ground) should have special allocations, or reserves for their family graves. It will be seen how Choa Kit Choon looked upon the reservation. In the Deed Poll of 6th January, 1903, he recites that "the whole of the said piece of land was used as a burial ground for the tribe or clan Choa." I have no doubt he included the family burial ground in that statement and claimed that its reserved use was nevertheless in full accordance with the general trusts for the clan, and in no way inconsistent with them.

But by the very same token, if the trusts were all one and homogeneous, how could he consistently sever the legal estate? The whole land was admittedly conveyed to and accepted by Beng Seang and Kit Choon as trustees for the whole clan, upon express trusts. It could not matter that they advanced the purchase price themselves and did not collect funds for the purpose from their clansmen. A preferential allocation of good sites for a burial ground of their own family was not inconsistent with those trusts. An alienation of the land away from the clan and the clan's burial ground, clearly was. It was a breach of trust, however innocently and however honestly (though mistakenly) Beng Seang and Kit Choon believed that their payment of the purchase price with their own money, entitled them so to deal with the land.

Mr. Koek however sets up limitation and alternatively, acquiescence. This is essentially a suit to follow trust property, the subject of an express trust, and falls under section 10 of the Limitation Ordinance. If the doctrine of acquiescence could possibly apply in such a case, it would depend upon notice. There is no evidence at all of any notice to any member of the clan, apart from the original grantees' own families, of the conveyance of the 1 acre 3 roods 02 poles. The allocation was publicly known. Not so the conveyance, so far as the evidence goes.

The Court will be loth always to interfere with administrative arrangements of a charity like this. The Conveyance of August, 1879, however, went further than any matter of mere administration. It amounted to a making away with trust property.

At this stage I make no consequential orders. I am in hopes that the matter may be set right as the result of a consultation between the parties and with as little hurt as may be to the susceptibilities of any party.

I therefore adjourn the suit to the November sittings to enable the parties to reconsider their position.

Solicitors for the Plaintiffs—
Braddell Brothers.
Solicitor for the Defendants—*E. R. Koek.*

[DISTRICT COURT, SINGAPORE]

PRYDE, D.J.

October 18, 1924.

SOONG VOON SEN v. ANG KIONG HEE.

[CASE No. 617 of 1924]

Application by wife for maintenance—Ordinance 96, S. 38 (1)—Validity of Chinese marriage.

A Chinese marriage ceremony performed in the "Reformed" style confers upon the woman at least the status of a secondary wife; whether it confers the status of a principal wife not decided.

Summons.

A summons was taken out by the Complainant Soong Voon Sen against her husband Ang Kiong Hee claiming maintenance under Ordinance 96, S. 38 (1). The Complainant alleged that she was on the 3rd February, 1923, married to Ang Kiong Hee in the reformed style. The Complainant and Defendant went to the Chinese Literary Society in Singapore and there went through a form of marriage ceremony. The Complainant in the presence of witnesses acknowledged that she was willing to take the Defendant as her husband and he similarly acknowledged that he was willing to take her as his wife. Rings were exchanged and all parties signed in duplicate a form of marriage certificate. A tea party was held and photographs taken. The intention of the parties was to celebrate a valid first marriage. The Defendant having failed to support his wife she applied to the Court for maintenance.

On the summons coming on for hearing the Defendant objected that such a marriage ceremony was invalid, that the parties were not man and wife and that the Court had no jurisdiction to pronounce a judgment which necessarily involved a declaration of marriage and that in the special circumstances of the case the Court ought not to assume jurisdiction. The Court considered the matter and after evidence and argument delivered a considered judgment on the preliminary objections.

Laycock for Complainant.

M. V. Pillai for Defendant.

PRYDE, D. J.,—The present proceedings are brought under section 38 (1) of the local Minor Offences Ordinance, viz. Ordinance 96. The actual words of the Section are: "If any person neglects or refuses to maintain his wife....., a District Court or Police Court, upon due proof thereof, may order such person to make a monthly allowance for the maintenance of his wife."

The Indian Legislature has dealt with this topic, in its Criminal Procedure Code, in almost though not exactly, identical terms. One question that arises at the very outset is this: Are such proceedings Criminal proceedings? Or are they Civil proceedings? If criminal, the defendant may not be examined on oath against his will. If civil, he may. To my personal knowledge, Mr. Justice Voules, as he then was, ruled in the Supreme Court of the Federated Malay States at Kuala Lumpur, a few years ago, that such proceedings were Criminal, and that the complainant must bear the burden of establishing her case, without forced aid from the defendant. It may be noted, however, that Mr. Boys in his commentary on the Indian Criminal Procedure Code, at page 828, states that "the proceedings are of a civil nature." And he quotes authorities. And it may further be noted that, in *Harrop* v. *Harrop*, Times L.R., Vol. 36, page 635, at page 638, a case in which a "maintenance order" made by the Judicial Commissioner, Ipoh, on appeal, came before Mr. Justice Sankey. Mr. Justice Sankey expressly declined to decide whether such order was, or was not, "a judgment in a *Criminal* proceeding."

As the local law is contained in the Minor Offences Ordinance I treated the present proceedings as criminal, though it is plain that the question whether a woman is lawfully married or not has nothing to do with the law of Crime, but is a question of fact, or of mixed fact and law.

I think that the framer of section 38 (1) did not anticipate any difficulty arising in practice as to proof of marriage. Doubtless he merely borrowed this legislation from the Statute-book of some other country, where a married woman could produce her "marriage lines" without the slightest difficulty. Even in this country this is easy enough if the marriage has been celebrated in accordance with the requirements of the Christian Marriage Ordinance. But then, the Christian Marriage Ordinance applies only where one party to the marriage is a Christian, or where both are Christians. And in Singapore, we have a great population of Chinese, most of whom are non-Christians. I think I am correct in saying that there is no provision made by the Legislature in respect of marriages contracted among such non-Christians, not being Muhammadans.

In this present case, the complainant gave evidence, and was cross-examined, and I take it that her evidence was accepted by the defendant as true. That is, I find that she and defendant went through a ceremony which may briefly be described as a Chinese marriage in the reformed style. The question is: Is such a ceremony valid, so that the woman becomes a "wife," within the meaning of section 38 (1) of the Minor Offences Ordinance?

I am unaware of any decision on the subject of Chinese marriages, solemnised in the reformed style. And Counsel could refer me to no case exactly in point.

To return to section 38 (1): Complainant, by invoking that section, asks the Court to do two things, viz.

(a) To declare that she is defendant's wife.
(b) To declare that defendant must pay her maintenance.

Now, to make a declaration that a woman is lawfully married to a given man, has far-reaching consequences. Not only would it confer a right to present maintenance: it would confer the status of legitimacy on children of the union, and it might affect the devolution of property. In the English Rules of the Supreme Court, it is stated that "no action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make declarations of right whether any consequential relief is or could be claimed, or not." I presume the local Supreme Court has similar powers, and it would save this Court a good deal of trouble if complainant obtained from the local Supreme Court a declaratory judgment as to her alleged status as wife of defendant; and then, armed with such a judgment in lieu of marriage lines, applied to this Court for a maintenance order.

A close examination of section 38 (1) of the local Ordinance, however, seems to lay on the District Court or the Police Court the duty of deciding whether, or not, complainant *is* defendant's wife. The words are: "If any person

neglects.....to maintain his wife.....a District Court or Police Court, upon due *proof thereof*, may order....." The words "upon due proof thereof" must, I think, mean: "Upon proof that defendant (a) *neglects* to (b) *maintain* his (c) wife." I therefore hold that the Legislature has, by necessary implication, empowered and required District Courts and Police Courts to adjudicate on the status of a complainant under section 38 (1) *vis-a-vis* a defendant, and to declare whether such persons *are* man and wife.

I find that complainant was born in Perak, and defendant in Selangor, and that they are of Chinese descent, and that complainant is a Buddhist, and that defendant is a non-Christian.

I find that, in February, 1923, there was a ceremony performed between them in Singapore, and that they each professed in public at that ceremony that they took the other in matrimony, and that they signed what purports on its face to be a marriage document.

The nearest case in point which I have come across is that of *Cheang Thye Phin and others* v. *Tan Ah Loy*, L.R. (1920) A.C., page 369. In Westlake's "Private International Law," the Edition of 1922, at page 56, this case is briefly summarised thus: "A Chinese marriage has been recognised for Chinese subjects in Penang, though no ceremony took place, because the *lex loci actus* required no forms." I have read the full report of that case, and the head-note in the Law Reports is, in my opinion, a much more satisfactory synopsis of what was actually decided by the Privy Council in that case. The head-note reads: "According to the Chinese law of marriage, which is applied in Penang in the case of Chinese residents, a Chinaman may have secondary wives, (sometimes called *t'sips*), who have the status of wives, and whose children are legitimate. Although some sort of ceremony is usual when a '*t'sip*' is taken, proof of the performance of a ceremony is not essential to establish the relationship."

The facts of the Privy Council case are very different from the facts of the present case, and the judgment in the Privy Council case must, of course, be read in the light of the facts in that case. Yet, in the present case, it may be noted that the complainant claims merely the status of a wife. It is true that, in examination, complainant averred that she married defendant on the footing of being his first (i.e. his principal) wife. In my opinion, on the facts of this case, that Court would be justified, in virtue of the Privy Council decision, in holding that the complainant, by virtue of the ceremony referred to, acquired thereby at least the status of a secondary wife. And, among Chinese, a secondary wife is a full wife, though subordinate in status to a principal wife. And I do not decide that complainant did *not* become a principal wife, by virtue of the ceremony referred to. That question does not arise at present.

That is, I decide that this Court has jurisdiction, and I declare that complainant is the wife of the defendant, within the meaning of section 38 (1) of the Minor Offences Ordinance.

And I can only express the hope that the Legislature will see its way to pass legislation on the subject of Chinese marriages.

Solicitors for Complainant:

Braddell Brothers.

Solicitor for Defendant: *M. V. Pillai.*

[ORIGINAL CIVIL JURISDICTION]

HUGGARD, C.J.

August 11, 1933.

RE SASSOON EZEKIEL.

[SINGAPORE BANKRUPTCY No. 678 of 1931]

Order for payment of costs "by the Official Assignee of the property of Sassoon Ezekiel, a bankrupt"—Writ of Seizure and Sale issued against Official Assignee on non-payment.

Where a party who was a stranger in bankruptcy proceedings had obtained an order for costs against the Official Assignee of the property of a named bankrupt and upon the Official Assignee making default in payment, a Writ of Seizure and Sale was issued against the Official Assignee:—

Held, that a Writ of Seizure and Sale properly lay against the Official Assignee in the bankruptcy matter.

In this case the Official Assignee on the 29th March, 1932, moved the Court to declare void and or to set aside a conveyance by a Bankrupt to his wife made shortly before the Bankruptcy. On the 24th January, 1933, the Court made the following order on the Motion, namely:—"That the said Motion be refused with costs to be taxed and paid by the Official Assignee of the property of the said Sassoon Ezekiel, a bankrupt."

The 1st Respondent, Rachael Sassoon taxed her costs under the said Order. These were certified by the Registrar on the 27th April, 1933, at the sum of $593.04 which amount was subsequently reduced to $446.44 by a set-off for reasons not material for the purpose of this report.

The Official Assignee did not pay such costs and thereupon the 1st Respondent caused a Judgment Debtor Summons to be issued under Sections 658 of the Civil Procedure Code to examine him orally respecting his ability to pay.